



General Assembly

February Session, 2010

Raised Bill No. 478

LCO No. 2512

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Referred to Committee on Finance, Revenue and Bonding

Introduced by:
(FIN)

***AN ACT CONCERNING INTRA-CORPORATION PAYMENTS TO
RELATED ENTITIES.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 12-218c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010, and*
3 *applicable to income years commencing on or after January 1, 2010*):

4 (a) As used in this section:

5 (1) "Affiliated group" has the same meaning as in Section 1504 of the
6 Internal Revenue Code.

7 (2) "Intangible expenses and costs" includes (A) expenses, losses and
8 costs for, related to, or in connection directly or indirectly with the
9 direct or indirect acquisition, use, maintenance or management,
10 ownership, sale, exchange, or any other disposition of intangible
11 property to the extent such amounts are allowed as deductions or costs
12 in determining taxable income before operating loss deduction and
13 special deductions for the taxable year under the Internal Revenue
14 Code; (B) losses related to or incurred in connection directly or

15 indirectly with factoring transactions or discounting transactions; (C)
16 royalty, patent, technical and copyright fees; (D) licensing fees; and (E)
17 other similar expenses and costs.

18 (3) "Intangible property" means patents, patent applications, trade
19 names, trademarks, service marks, copyrights and similar types of
20 intangible assets.

21 (4) "Interest expenses and costs" means amounts directly or
22 indirectly allowed as deductions under Section 163 of the Internal
23 Revenue Code for purposes of determining taxable income under the
24 Internal Revenue Code to the extent such expenses and costs are
25 directly or indirectly for, related to, or in connection with the direct or
26 indirect acquisition, maintenance, management, ownership, sale,
27 exchange or disposition of intangible property.

28 (5) "Related member" means a person that, with respect to the
29 taxpayer during all or any portion of the taxable year, is a related
30 entity, as defined in this subsection, a component member as defined
31 in Section 1563(b) of the Internal Revenue Code, or is a person to or
32 from whom there is attribution of stock ownership in accordance with
33 Section 1563(e) of the Internal Revenue Code.

34 (6) "Related entity" means (A) a stockholder who is an individual, or
35 a member of the stockholder's family enumerated in Section 318 of the
36 Internal Revenue Code, if the stockholder and the members of the
37 stockholder's family own, directly, indirectly, beneficially or
38 constructively, in the aggregate, at least fifty per cent of the value of
39 the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's
40 partnership, limited liability company, estate, trust or corporation, if
41 the stockholder and the stockholder's partnerships, limited liability
42 companies, estates, trusts and corporations own directly, indirectly,
43 beneficially or constructively, in the aggregate, at least fifty per cent of
44 the value of the taxpayer's outstanding stock; or (C) a corporation, or a
45 party related to the corporation in a manner that would require an
46 attribution of stock from the corporation to the party or from the party

47 to the corporation under the attribution rules of Section 318 of the
48 Internal Revenue Code, if the taxpayer owns, directly, indirectly,
49 beneficially or constructively, at least fifty per cent of the value of the
50 corporation's outstanding stock. The attribution rules on Section 318 of
51 the Internal Revenue Code shall apply for purposes of determining
52 whether the ownership requirements of this subdivision have been
53 met.

54 (b) For purposes of computing its net income under section 12-217 a
55 corporation shall add back otherwise deductible interest expenses and
56 costs and intangible expenses and costs directly or indirectly paid,
57 accrued or incurred to, or in connection directly or indirectly with one
58 or more direct or indirect transactions with, one or more related
59 members.

60 (c) (1) The adjustments required in subsection (b) of this section
61 shall not apply if [the corporation establishes by clear and convincing
62 evidence that the adjustments are unreasonable, or] the corporation
63 and the Commissioner of Revenue Services agree in writing to the
64 application or use of an alternative method of apportionment under
65 section 12-221a. Nothing in this subdivision shall be construed to limit
66 or negate the commissioner's authority to otherwise enter into
67 agreements and compromises otherwise allowed by law.

68 (2) The adjustments required in subsection (b) of this section shall
69 not apply to such portion of interest expenses and costs and intangible
70 expenses and costs that the corporation can establish by the
71 preponderance of the evidence meets both of the following: (A) The
72 related member during the same income year directly or indirectly
73 paid, accrued or incurred such portion to a person who is not a related
74 member, and (B) the transaction giving rise to the interest expenses
75 and costs or the intangible expenses and costs between the corporation
76 and the related member did not have as a principal purpose the
77 avoidance of any portion of the tax due under this chapter.

78 (3) The adjustments required in subsection (b) of this section shall

79 apply except to the extent that increased tax, if any, attributable to such
80 adjustments would have been avoided if both the corporation and the
81 related member had been eligible to make and had timely made the
82 election to file a combined return under subsection (a) of section 12-
83 223a.

84 (d) Nothing in this section shall require a corporation to add to its
85 net income more than once any amount of interest expenses and costs
86 or intangible expenses and costs that the corporation pays, accrues or
87 incurs to a related member described in subsection (b) of this section.

88 (e) Nothing in this section shall be construed to limit or negate the
89 commissioner's authority to make adjustments under section 12-221a
90 or 12-226a.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-218c

Statement of Purpose:

To clarify and strengthen the existing law relating to intra-corporation transfers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]